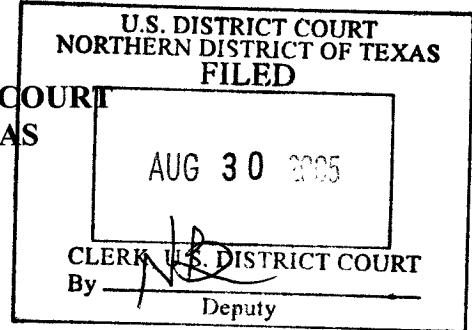


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



HAROLD B. CORNISH
Plaintiff,

vs.

TEXAS DEPARTMENT OF
PROTECTIVE AND REGULATORY
SERVICES, JOHN ADAMO,
STUART MACKEY, INDIVIDUALLY
AND IN THEIR OFFICIAL CAPACITY
Defendants.

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CIVIL ACTION
NO. 3:04-CV-0969-K

**DEFENDANTS' OPPOSED MOTION TO STRIKE PLAINTIFF'S RESPONSE
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE ED KINKEADE:

Defendants, Texas Department of Protective and Regulatory Services (hereinafter, the "TDPRS"), John Adamo, and Stuart Mackie (hereinafter, the "Defendants"), file this Opposed Motion to Strike Plaintiff's Response to Defendants' Motion for Summary Judgment, and would respectfully show the following:

BACKGROUND

Plaintiff sued the Defendants on May 5, 2004, alleging gender, age, and sex discrimination and retaliation for Plaintiff's filing previous Title VII complaints against a former employer, the Dallas Police Department. This suit stems from Plaintiff's complaints against Defendants TDPRS, John Adamo, and Stuart Mackie for allegedly denying him employment for more than 50 positions with the TDPRS.

Defendants' Motion for Summary Judgment was timely filed on June 15, 2005, to which Plaintiff responded on August 23, 2005. (Docket Entry No. 48.) On August 4, 2005, Plaintiff filed

an untimely Motion to Enlarge Time to respond to the Defendants' Motion for Summary Judgment.¹ (Docket Entry No. 45). On August 10, 2005, the Court signed an Order granting the Plaintiff's motion and requiring the Plaintiff to file his response no later than August 17, 2005. (Docket Entry No. 47). Nonetheless, the Plaintiff did not file his response until August 23, 2005 – six days after the Court's deadline. (Docket Entry No. 48).

DEFENDANTS' GROUNDS FOR MOTION TO STRIKE

Because the Plaintiff has failed to comply with Local Rule 7.1(e) and the Court's August 10, 2005 Order, the Court should strike the Plaintiff's Response to Defendants' Motion for Summary Judgment and consider the Defendants' Motion for Summary Judgment without a response from the Plaintiff.

The Plaintiff has failed to comply with this Court's August 10, 2005 Order requiring all responses to be filed no later than August 17, 2005. The Plaintiff failed to offer any excuse for his lack of compliance, nor did he file any request to file his response beyond the Court's August 17, 2005 deadline. The Plaintiff's failure to timely file his response is particularly problematic in this case because the Plaintiff himself proposed August 17, 2003 as the deadline for his response. (Docket Entry No. 45).

Finally, the Plaintiff has had approximately three months from the date that Defendants filed their Motion for Summary Judgment to file a response. The Local Rules provide for 20 days.

CONCLUSION

Plaintiff's Response should be stricken as untimely and for Plaintiff's failure to show good cause. The grounds are set out more fully with arguments and authorities in Defendants' Brief in

¹In fact, Plaintiff filed five motions for extension of time. (Docket Entry Nos. 32, 39, 41, 42, and 45).

Support of Defendants' Opposed Motion to Strike Plaintiff's Response to Defendants' Motion for Summary Judgment filed concurrently.

PRAYER

For the foregoing reasons, Defendants request that this Court strike the Plaintiff's Response to Defendants' Motion for Summary Judgment. (Docket Entry No. 48). Defendants pray for such additional relief to which they may be entitled.

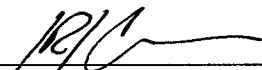
Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE CONFERENCE

I certify that I have spoken with John Copeland, Plaintiff's attorney of record, who states that he is opposed to Defendants' Motion to Strike Plaintiff's Response to Defendants' Motion for Summary Judgment.



CHRISTOPHER COPPOLA
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via United States certified mail, Return Receipt Requested, on this 29th day of August, 2005, on:

John D. Copeland
Attorney at Law
1401 Elm Street, Suite 4585
Dallas, Texas 75202



CHRISTOPHER COPPOLA
Assistant Attorney General